petitioner-appellant, and all other condemnees in like situation of equal protection of the law in violation of the 14th Amendment of the United States Constitution. This is an issue previously presented, expansion of which may well be dispositive of the case at bar.

Wherefore, Movant respectfully requests leave to file with this Honorable Court his brief, which because of the shortness of time is printed following this motion.

IN THE

SUPREME COURT OF THE UNITED STATES

No. A-1026

MAY TERM, 1972

FREDERIKA BLANKNER,

Petitioner-Appellant,

vs.

CITY OF CHICAGO, A Municipal Corporation,

Respondent-Appellee.

On Petition For Writ Of Certiorari To The Supreme Court Of Illinois

PRO SE AMICUS BRIEF CURIAE

The amicus represents himself and over *425,000* persons residing in the 11th Congressional District. This constituency is vitally interested in the uses and abuses of governmental power through the utilization of the power of eminent domain. Included here are both large and small property owners, businessmen and renters who are concerned with the stability of communities in a time when instability threatens to virtually destroy the very fabric of our urban society.

The case at bar relates to procedural requirements required of local public bodies prior to condemnation in urban renewal projects. The Constitution has provided the right of eminent domain to the states, and Congress has implemented the use of this power by providing funds for urban renovation and rehabilitation. It is unquestioned that urban blight and decay must be stopped, but this Honorable Court must be aware that often in the name of "public good", such apparently worthwhile objectives as urban renewal literally destroy neighborhoods, traditions, family structure and result in "urban dislocation", not "renewal", to the benefit not of the "public" but rather, as in the instant case, to the benefit of large institutions and moneyed interests.

1. The instant case is a prime example of the abuses which have been inherent in urban renewal projects and eminent domain proceedings in local communities across the nation. Presented below are examples of the abuses which appeared in this case.

a. Gross inconsistencies and apparent misrepresentations appear on the face of the Report of the Department of Urban Renewal dated October 1, 1965, used as evidence to establish a prima facie case that the area in question was slum and blighted. This document indicated at one point that 100% of the structures in the area were delapidated. Later in the *same* report, it is indicated that 20 structures containing 123 living units were without *any* deficiencies. This evidence was presented in a brief filed by petitioner-appellant in the trial court and was totally ignored!

b. Further, in a map dated September, 1965 prepared again by the Chicago Department of Urban Renewal, the

condition of every building in the project area is designated. Three of the buildings, one owned by Petitioner-Appellant, and the other two owned by the University of Chicago, are designated as either "structurally sub-standard to a degree *requiring* clearance" or "obsolete, not suitable for improvement or conversion" and "deteriorating because of a defect not correctable by normal maintenance". In fact, however, all of these buildings are still standing, house forty families, have been rehabilitated and are in good condition. In fact, Petitioner-Appellant's building received a certificate of inspection *from* the City of Chicago indicating "no violations". This is a misrepresentation of fact by the City which, if proven, certainly would have been sufficient to cast doubt on the basis of the "slum and blighted" designation and rebut the prima facie case established by Respondent-Appellee in the trial court. Yet, Petitioner-Appellant was not given the opportunity to present this evidence in open court.

c. Further, there is evidence that in the instant case, the taking was not in reality for the "public purpose" of slum clearance but for the very "private purpose" of making land available to the University of Chicago, a private institution, for its own expansion. Aside from providing explanation for the misrepresentations of fact hereinbefore noted, this motive would explain the strange change in the results of studies of the *same area* made within three years of each other. In 1962, the City of Chicago commissioned a study of Petitioner-Appellant's community. The results of this "in-house" document actually showed that the community in question was the least dilapidated of the area immediately north of the University of Chicago. In fact, this study further indicated that *less* than 20% of the housing units were dilapidated or in need of major repair.

Query the subsequent study by the City of Chicago in 1965, only three years later, showing that 100% of this same community was "slum and blighted", and slated for condemnation. Amicus contends that a change of this magnitude is not indicated by any other known statistics for the area, and in fact that such a dramatic change in three years is highly improbable.

d. Further, Amicus contends that these abuses of the "right" of eminent domain are made possible in part by the overly broad legislation which "defines" the criteria for a slum and blighted area.

Chapter 67½ §91.103(i) Illinois Revised Statutes.

(i) "Slum and Blighted Area" means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, *overcrowding, faulty arrangement or design, lack of* ventilation, *light* and sanitary facilities, *excessive land coverage, deleterious land use or layout* or any combination of these factors, are detrimental to the *public safety, health, morals or welfare.*

In a four block stretch on Chicago's lakefront, on North Sheridan Road, there exists a wall of high rise buildings which front on Lake Michigan. These buildings have been constructed in rapid succession over a period of fifteen to twenty years. The net effect of this extraordinary development has been to destroy public beaches and parks, block any view or access to Lake Michigan, cause a major traffic problem which daily affects a major percentage of the residents of the North side of the City, create a total lack of parking space for residences of the immediately surrounding community and place a major strain on city and public

services in the area. During the past five years, at least one private plane has collided with one of these buildings causing extensive property damage and death and during the same period numerous sniper reports and a major increase in crimes have been reported.

Planners, architects, conservationists, politicians and citizens have attempted to solve this problem or at least moderate the pace of development which through short-sighted planning has produced an unreasonably high density of population, insufficient open space, inadequate parking and poor design of buildings. This high rise wall has virtually destroyed a once beautiful lake front area. Under §91.103(i) previously quoted, the solution is obvious: This community should be designated a *slum and blighted* area because the buildings and improvements in this area by reason of *overcrowding, faulty arrangement and design, excessive land coverage,* deleterious *land use and layout* and any combination of the above are detrimental to the public safety, health and welfare. This will not occur because these buildings contain $50,000 condominum apartments and the area is among the most expensive and prestigious in Chicago. Amicus brings this example as an indication of the overly broad discretion allowed the City of Chicago by State statute. This is discretion which can only be effectively checked by the courts. It is the unfortunate history of urban renewal, however, that the courts have been unwilling to limit the unconstitutionally broad powers of eminent domain as exercised in Chicago even in the face of demonstrable misrepresentations and contradictions of fact and law, as in the instant case.

2. The broad discretion outlined by statute and the consequent misuse of power by the Respondent-Appellee have

a greater effect than the deprivation of Petitioner-Appellant's property without due process of law. The abuse of this power and callous use through misrepresentation and disregard of individual rights provides evidence of a continuing gap between the citizen and his government. In few areas of governmental function, do citizens come into closer contact with their elected or appointed officials. The rightful cynicism and distrust of the citizenry that result are often impossible to correct. The Constitution and this Honorable Court exist in large measure, to keep a check on such abuses of power by the executive and legislative branches. The Amicus, as a citizen and duly elected representative of the people, urges this Court to review this case and attempt to set procedural due process guidelines on the taking of private property so that trust and faith in our system can be reinstated. We cannot govern if our citizenry has, through erosions of public trust as in the instant case, lost all confidence in the machinery of the Courts for redress of wrongs. The Amicus' concern in the instant case goes beyond the individual injustices outlined above. It is with Federal funds specifically earmarked for urban redevelopment, municipalities across the nation have perpetrated and continue to perpetrate a distorted and destructive urban "renewal." The Housing Act of 1949, the basis for "urban renewal" as we know it today, sets out in its preamble the purposes and objectives of the legislation:

"The general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization

as soon as feasible of the goal of a decent home and a suitable living environment for every American family thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation."

It is Amicus' position that we have strayed from the objective of a "decent home and suitable environment for every American family." In fact, the results of "urban renewal" have been the destruction of homes and suitable living environments. Carlos Campbell, Special Assistant to the Assistant Secretary for Metropolitan Development, Department of Housing and Urban Development, was quoted as saying that Congress has, to date, authorized over $8 billion for urban renewal which has consequently demolished 440,000 dwellings, while providing only 125,000 new units in the low and moderate income categories, *The Legal Lawbreakers,* Citizens Advocate Center (Wash., 1971). Furthermore, the National Commission on Urban Problems headed by former Senator Douglas projected that during the next five years, governmental action will again destroy at least twice as many dwelling units of the poor and near poor as it will produce, *Building the American City,* National Commission on Urban Problems, Washington, p. 83 (1969).

This same pattern, apparent nationwide, is also true of Chicago, where since 1948, 29,272 units have been demolished through the urban renewal program and in their place 11,000 units have been constructed, *Urban Renewal Chicagoland,* p. 23 (July, 1970). Those units which have been constructed are almost invariably outside the price range of whose who were displaced by the project. However, most of the land was sold to institutions because of

the tremendous profit the Department of Urban Renewal can gain through the 112 credits.

It is time for this Honorable Court to reexamine urban renewal. Much time has past since your examination and approval in *Berman* v. *Parker*, 348 U.S. 26, of the massive approach to urban redevelopment. It is Amicus' view that the governmental attitude toward "slum clearance" has become so encrusted that we have lost that open-mindeness so essential to a fair and equitable administration of government. The intent of Congress in enacting the aforementioned Housing Act of 1949, and all such subsequent legislation, was to provide funds for the renovation and renewal and rebirth of our communities. This intent has been unheeded. The abuses can be stopped most effectively through judicial action and protection of individual rights which have been trampled in our misguided desire to "rebuild" the cities. There must be a judicial redefinition of "public purpose" that insures individual property rights. Urban renewal is self-defeating if all sense of belonging and societal stability is thereby threatened. This has been the recent history of urban development. "Changing" neighborhoods are destroyed, the low and middle income persons displaced move to another community, which is soon subject to the same disease, and the process becomes endless. The result is a vacuum. All that remains is low income public housing, very expensive residential skyscrapers and large corporate and municipal institutions. The middle-class diversity and community of the cities has been destroyed. In the end, the public good is best served when individual members of that public are secure in their life, liberty and *property*.

3. As indicated in Petitioner-Appellant's brief, Respondent-Appellee's claim of notice and hearing prior to the

determination of the "slum and blighted" designation was illusory. This is brought into bold relief when compared with the City's notice and hearing requirements in regard to areas designated for "conservation". In the latter instance, City ordinances provide the following procedural steps:

"The Department of Urban Renewal . . . shall have and exercise the following powers with respect to the development, redevelopment and replanning of conservation areas . . . .

"(b) approve *each use* of eminent domain for the acquisition of real property for the purposes, provided that *every property owner* affected by condemnation proceedings *shall have the opportunity to be heard* by the Department *before* such proceedings may be approved;" (Municipal Code, City of Chicago,) 15-7 through (b); emphasis supplied).

These steps insure, through personal notice, that prospective condemnees have the opportunity to dispute and disprove administrative findings before their property is taken. When an area is under consideration for "slum and blighted" designation however, the only notice to the prospective condemnees is through use of a newspaper of general circulation. It has been argued by Respondent-Appellee that personal notice is given prior to court hearing on condemnation of individual parcels, and that suffices. However, it is at the earlier stage, i.e. the designation of the area as "slum and blighted", that the de facto "taking" occurs. This results because, as in the instant case, the courts accept the previous legislative and administrative findings of general slum and blight as the sole criteria for the taking of any individual parcel within that designated

area. Once accepted it is impossible for condemnees, because of lack of resources, etc., to prove that an area as large as that in question is not "slum and blighted."

Amicus contends that personal service and notice of these previous Department of Urban Renewal "hearings", are the minimum requirements for protection of condemnee's rights. And further, that the present system as previously outlined, unreasonably discriminates against condemnees in "slum and blighted" areas, because they are not afforded the same protection as condemnees in "conservation" areas. This practice violates the Equal Protection clause of the 14th Amendment and should be struck down.

CONCLUSION

The issues presented by this case cut across racial and economic lines. *All* urban residents, citizens of our nation, be they black, white, rich, poor or middle-income have the right guaranteed by our Constitution, to be secure in their property. Amicus is sworn to uphold that Constitution, and the rights inherent therein, as is this Honorable Court, from abrogation or outright denial. Abuse of governmental power is an ever present danger. The "public welfare" demands not only that modern structures be built, but that the total "public" be served. The right to live a secure existance, to the greatest extent possible must be extended to the "public", to the individual citizens that comprise that "public". It is now incumbent on this Honorable Court to review and investigate the area of law herein presented to the end that the abuses of government be curbed and corrected.

It is these concerns that Amicus represents in this Brief Amicus Curiae.

Wherefore, for the reasons set forth herein it is respectfully urged by Amicus Curiae that this Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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No. 71-1549

SUPREME COURT, U.S.
JUN 1972
E. ROBERT SEAVER, CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1971

FREDERIKA BLANKNER,

Petitioner,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

MOTION FOR PERMISSION TO APPEAR AND TO FILE BRIEF AS AMICUS CURIAE

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MOTION FOR PERMISSION TO APPEAR AND TO FILE BRIEF AS AMICUS CURIAE

Janitors Union, Local No. 1 (hereinafter Janitors Union) moves the Court for permission to appear and to file a brief as amicus curiae in support of the petition for certiorari previously filed herein by Frederika Blankner. Janitors Union has the consent of the petitioner but has been refused the consent of respondent to file a brief herein. In support of this motion, Janitors Union states:

1. The Janitors Union is an unincorporated labor organization with its principal office located in the City of Chicago.

2. The Janitors Union, which has about 10,000 members, is engaged in the representation of janitors who are employed by the owners of apartment houses and other multi-family residential dwellings, and apartment hotels, and is party to collective bargaining agreements with, among others, the Chicago Real Estate Board, the Chicago Residential Hotel Association, and numerous individual owners of residential dwellings.

3. In the past, many dwellings in the City of Chicago where janitors represented by the Janitors Union were employed have been located in areas determined, without specific notice or hearing to the persons affected by such determination, to be slum and blighted, pursuant to the Urban Renewal Consolidation Act, and have been acquired for redevelopment and eventually demolished with the result that many janitors were left unemployed.

4. Many other dwellings where janitors represented by the Janitors Union are employed are located near or adjacent to areas already acquired for redevelopment and are in danger of being similarly acquired and demolished, which will result in the loss of additional jobs and employment opportunities.

5. The Janitors Union believes that because of the administration of the Urban Renewal Consolidation Act without the constitutional safeguards of notice and hearing, dwellings are acquired, demolished and re-sold which are substantial, safe and habitable, in contravention of the purpose and intent of the Urban Renewal Consolidation Act, and which results in the needless deprivation of property and loss of jobs without due process of law.

6. Janitors Union's interest in this case is in seeking to protect the employment rights of persons adversely affected by the administration of the urban renewal laws.

Wherefore Janitors Union respectfully requests permission to appear herein as amicus curiae and to file with the Court their brief which, because of the late date, has been printed following this motion.

Respectfully submitted,

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BRIEF OF AMICUS CURIAE IN SUPPORT OF FREDERIKA BLANKNER'S PETITION FOR WRIT OF CERTIORARI

There would be no purpose in restating the facts which have been well stated in the previous briefs filed herein. What we think should be emphasized before this Court is that the action of the Department of Urban Renewal in declaring the area where petitioner's building is located to be slum and blighted was *quasi-judicial in character.* The declaration by the Department that an area is slum and blighted carries with it consequences of the most serious and far-reaching effect for the property owners

and employees in that area. Yet under the Illinois law and procedure neither a hearing nor personal notice to the property owners or other persons who would be adversely affected by such a declaration is required. This we submit is a serious denial of due process of law.

Respectfully submitted,

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